

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2
CHAPTER 4, AMEND ARTICLE 15, SECTION 1090

SPECIAL EQUIPMENT - WHEELCHAIR LIFTS (CHP-R-06-03)

The California Highway Patrol (CHP) proposes to amend regulations in Title 13, California Code of Regulations, related to requirements for wheelchair lifts.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 2402 of the California Vehicle Code (VC) authorizes the CHP to adopt and enforce rules and regulations necessary to carry out its duties. Section 34501 VC authorizes the Department to adopt reasonable rules and regulations that, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Section 34500 VC, regarding, but not limited to, equipment, inspection, maintenance, and recordkeeping. The rules and regulations adopted pursuant to Section 34501 shall not, however, be applicable to school buses, which shall be subject to rules and regulations adopted pursuant to Section 34501.5 VC. The CHP adopted standards for wheelchair lifts for all buses, except school buses, in approximately 1979. These standards are contained in Sections 1090-1095, Title 13, California Code of Regulations (13 CCR).

In adopting Section 34501.1 VC, the Legislature further directed in 1989, that all “wheelchair lifts for buses, school buses, youth buses, and general public paratransit vehicles, regardless of capacity” be certified by the manufacturer to the CHP that they meet “the California law and any federal law and the regulations adopted thereto.”

The National Highway Traffic Safety Administration (NHTSA) has now adopted standards into the Federal Motor Vehicle Safety Standards (FMVSS) for all wheelchair lifts intended for use on all motor vehicles, including all buses as well as private personal passenger vehicles. These standards are contained in FMVSS Nos. 403 and 404 (49 CFR 571.403 and 571.404). Under the FMVSS it will be unlawful, after the effective date of the regulations, for any party to manufacture for sale any wheelchair lift for any motor vehicle that does not comply with the standard. It will be further unlawful for any motor vehicle dealer to sell any new vehicle with a wheelchair lift installed that does not comply with the standards for both the wheelchair lift itself and the installation of the wheelchair lift in the vehicle.

In response to the adopted FMVSS, the CHP amended the standards contained in 13 CCR, Sections 1090-1095 in 2003 to incorporate, by reference, the requirements contained in the FMVSS for wheelchair lifts. The effective date contained in the amendment to 13 CCR coincided with the original effective date of the FMVSS as published in the Federal Register. However, after publishing the effective date in the Federal Register, the NHTSA delayed the actual effective date of the FMVSS.

The CHP now proposes to amend the effective dates of the FMVSS referenced in Section 1090, 13 CCR. The effective dates contained in the proposed amendment coincide with the actual effective dates of the FMVSS.

By proposing this regulatory action, the CHP's purpose is to fully harmonize California regulation with federal regulation as required by the Motor Vehicle Safety Act, Chapter 301, Title 49, United States Code (49 USC, §§ 30101 et seq.), and to extend the benefits of the federal regulation to all wheelchair lift users.

In adopting the standards contained in the FMVSS into 13 CCR, the CHP notes that these standards apply to all wheelchair lifts intended to be installed in motor vehicles. Failure to comply with these standards is a violation of federal law. Consequently every manufacturer or installer of wheelchair lifts, whether intended for interstate or intrastate commerce is required to adhere to the federal standards. Therefore adopting these standards into 13 CCR will have no adverse economic impact on any manufacturer or installer of wheelchair lifts, since they are already required to comply with the federal standard by federal law. Adopting these standards into 13 CCR merely gives the CHP and allied agencies authority to enforce these standards.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

CHP, Enforcement Services Division
Commercial Vehicle Section
ATTN: Mr. Cris Morgan
P. O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 PM May 7, 2007.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling the CHP, Commercial Vehicle Section at (916) 445-1865. Facsimile requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 444 North Third Street, Sacramento. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our website at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our website.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations should be directed to Mr. Cris Morgan or Mr. Gary Ritz, CHP, Commercial Vehicle Section at (916) 445-1865. Inquiries regarding the substance of the proposed regulations should be directed to Mr. Cris Morgan.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no nondiscretionary or reimbursable costs or savings to any local agency, school district, or state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of

California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The CHP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action will not affect small businesses. This proposed regulatory action makes only technical, non-substantive or clarifying changes to current law and regulations.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the California Highway Patrol, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The California Highway Patrol invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402, 24011 and 34501.1 VC.

REFERENCE

This action implements, interprets, or makes specific Sections 2402, 24011 and 34501.1 VC.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
S. J. VAUGHN, Chief
Enforcement Services Division